

of Solidarity, including Susan Sontag, Adam Ulam, Czeslaw Milosz, and others. An energetic young man named Eric Chenoweth and wise strategist named Irena Lasoda soon became familiar faces in the Halls of Congress, circulating information about the struggle of solidarity and people in Poland to endure the repression they confronted.

The political force that kept the democratic world focused on support for the people of Poland then was the American labor movement, led by its president Lane Kirkland and his secretary-treasurer Tom Donahue. They immediately established the AFL-CIO's Polish Workers Aid Fund and put Tom Kahn, the international affairs director of the AFL-CIO, at its helm. They persisted in making the steady argument, even after December 1981, that in Solidarnosc lay the potential for a new, more democratic, more just, and more peaceful world.

It was the AFL-CIO, representing 16 million people, that gave voice and strength to the free trade union Solidarity in the United States. We forget how many were willing to forsake Solidarity in the period of martial law. Indeed, only the AFL-CIO, backed by the committee, pressured President Reagan and his administration to adopt stronger sanctions in response to the state of war. As importantly, it was the AFL-CIO that made sure Solidarity was sustained through financial and material help, some of which was supported by the National Endowment for Democracy, after its creation in 1984.

Thanks to that support and steadfastness, eventually the government relented, especially once Mikhail Gorbachev rose to power in the USSR and began to pull back the support for the repressive policies in Poland and elsewhere in the Warsaw Pact.

Roundtable Talks between the government and Solidarity-led opposition led to semi-free elections in June of 1989. In an arrangement that was similar in some ways to what transpired more recently in Burma, partially free elections were organized in which a large block of seats in the legislature were reserved—in the case of Burma for the military and in the case of Poland, in 1989, for the Communist party and its allies.

All seats in the newly recreated Senate of Poland were to be elected democratically, as were 161 seats—35 percent of the total—in Sejm. The remaining 65 percent of the seats in the Sejm were reserved for the Polish United Workers' Party—the Communist Party—and its satellite parties. These seats were still technically elected, but only government-sponsored candidates were allowed to compete for them. In addition, all 35 seats elected via the countrywide list were reserved for the Communist Party's candidates to ensure that the most notable leaders of the Polish United Workers Party were elected.

But in the June elections, the people of Poland voted so overwhelmingly for

the representatives nominated by Solidarity that the Communists and the military lost all credibility. By the end of August, a Solidarity-led coalition government was formed, and in December, Tadeusz Mazowiecki was elected Prime Minister.

Poland has since then developed into such a strong democracy and economically liberal country that it has led its neighbors into joining the European Union and the North Atlantic Treaty Organization. It has become in every sense an ally of the United States. And in the past 2 years, it has again been true to the heritage of Solidarity by providing safe haven for many political refugees from Belarus and elsewhere.

While many of us continue to have concerns about some aspects of Polish Government policy, its treatment of certain media outlets, and the fate of the rule-of-law in the country, the government of Poland is a friend with whom we can have honest conversations. Indeed, I am sitting down later this afternoon with the newly arrived Polish ambassador to Washington, Marek Magierowski, to continue these conversations. This is especially important at this time because Poland will become the chairman-in-office next month of the Organization for Security and Cooperation in Europe—the OSCE—and will play a major role in shaping the OSCE's response to efforts by Russia and others to undermine the work of the organization and stability in the region.

Mr. President, I ask unanimous consent that the full text of S. Res. 268 from the 97th Congress, as adopted on December 15, 1981, be printed in the RECORD at this point, along with the announcement of December 15, 1981, of the creation of the Committee in support of Solidarity.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### S. RES. 268

Whereas the American and Polish peoples share a deep and abiding friendship;

Whereas the imposition of martial law, and the suspension of workers' rights in Poland on December 13, 1981, constitute grave abridgements of the human rights and civil liberties of the Polish people;

Whereas it is the clear and unassailable right of the Polish people collectively to determine their own future: Now, therefore, be it

*Resolved*, That it is the Sense of the Senate that—

(1) the American people desire an early and peaceful and popularly supported resolution of the issues which have led to the imposition of martial law in Poland;

(2) the American people deplore the imposition of martial law in Poland, the suspension of the rights of workers to organize and peaceably to defend their interests, and the arrests of leaders of Solidarity; the free trade union;

(3) recent events call into question the suitability of the further provision of assistance to the government of Poland except for humanitarian programs;

(4) it is the right of the Polish people to resolve their own problems without outside interference of any kind;

(5) the support of the American people for continued United States dealings with the present government of Poland will relate directly to the degree to which the Polish government avoids violence and bloodshed, and demonstrate by its actions its respect for a full and legitimate role for the Solidarity labor union and its commitment to the continuation of Poland's reforms;

(6) the President and the Secretary of State should continue to stress this United States position in all dealings with Polish officials;

(7) the President and his Administration should consult intensively with our allies to develop a concerted and sustained response to the threat to the democratization process in Poland.

#### COMMITTEE IN SUPPORT OF SOLIDARITY.

*New York, NY, December 15, 1981.*

WE, THE UNDERSIGNED, DECLARE: At midnight on December 13, 1981, the Polish army and police raided the offices of the Independent Trade Union "Solidarity"; thousands, perhaps tens of thousands, of people were arrested in their homes. The Prime Minister, Minister of Defense and First Secretary of the Polish Communist Party in one person, General Jaruzelski, declared martial law.

Polish society, in whose overwhelming support Solidarity has its strength, has exercised the utmost restraint in the face of countless acts of provocation on the part of the government. In the sixteen months of its existence, Solidarity has committed no illegal acts; it has rigorously respected the Polish constitution and all the forms of political life accepted in civilized societies. Each and every voice from Solidarity, even if termed "radical" by the Communist Party or the western media, has been no more than the exercise of that right to free and open discussion of national affairs which is guaranteed by the constitution. The party and the government, on the other hand, have violated almost every agreement they have signed; they have also violated the basic right of all citizens to freedom of expression.

The present events are not the "internal affairs of Poland." The Soviet Union has been intervening in Polish internal affairs since 1944. The Junta of General Jaruzelski, by linking the arrests of Solidarity members to those of former party officials, is clearly attempting to blame Solidarity for the thirty-six years of indolent and devastating communist rule that have brought Poland to economic collapse. The strikes called by Solidarity have resulted in the loss of one day's work in sixteen months; mismanagement and lack of supplies have resulted in the loss of over twenty work days.

We appeal to every democratic government, and to all those who believe in the Polish people's right to basic freedoms, to immediately halt all economic and other transactions with Poland, until every member of Solidarity is freed.

STANISLAW BARANCZAK.  
JOSIF BRODSKY.  
LESZEK KOLAKOWSKI.  
CZESLAW MILOSZ.  
SUSAN SONTAG.  
ADAM ULAM.  
STANISLAW WELLISZ.  
THOMAS WENZLOWA.

#### GAO DECISION B-33501

Mr. PAUL. Mr. President, I ask unanimous consent to have the attached issuance of the Government Accountability Office's Decision B-33501 printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

## DECISION

Matter of: Centers for Disease Control and Prevention-Applicability of Congressional Review Act to Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs

File: B-333501

Date: December 14, 2021

## DIGEST

On February 3, 2021, the Centers for Disease Control and Prevention (CDC) published a document in the Federal Register entitled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs, 86 Fed. Reg. 8025 (Mask Requirement). Under the CDC's Mask Requirement all persons using public conveyances such as planes, trains, and buses must wear facial coverings while on the conveyance and at transportation hubs such as airports and bus stations. CDC did not submit a CRA report to Congress or the Comptroller General on the Mask Requirement.

The Congressional Review Act (CRA) requires that before a rule can take effect, an agency must submit the rule to both the House of Representatives and the Senate as well as the Comptroller General, and provides procedures for congressional review where Congress may disapprove of rules. We conclude that the Mask Requirement meets the definition of a rule for purposes of CRA and, therefore, is subject to CRA's requirements for submission and congressional review. With this decision, we are not taking a position on the policy of imposing a mask requirement or what steps the agency or Congress may take next; our decision only addresses CDC's compliance with CRA's procedures for congressional review.

## DECISION

The Centers for Disease Control and Prevention (CDC), a component of the U.S. Department of Health and Human Services (HHS), issued a document entitled Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs, 86 Fed. Reg. 8025 (Mask Requirement) that was published in the Federal Register on February 3, 2021. Senator Rand Paul, M.D., subsequently requested our legal decision as to whether the Mask Requirement is a rule for purposes of the Congressional Review Act (CRA). Letter from Senator Rand Paul, M.D., to Comptroller General (Aug. 9, 2021). For the reasons explained below, we conclude that it is.

Our practice when rendering decisions is to contact the relevant agencies to obtain their legal views on the subject of the request. GAO, Procedures and Practices for Legal Decisions and Opinions, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at <https://www.gao.gov/products/gao-06-1064sp>. Accordingly, we reached out to HHS to obtain the agency's legal views. Letter from Managing Associate General Counsel, GAO, to Acting General Counsel, HHS (Aug. 12, 2021). We received HHS's response on September 28, 2021. Letter from Acting General Counsel, HHS, to Managing Associate General Counsel, GAO (Sept. 28, 2021).

## BACKGROUND

## CDC Mask Requirement

On January 31, 2020, in response to confirmed cases of Novel Coronavirus Disease 2019 (COVID-19), the Secretary of HHS declared a public health emergency under the Public Health Service Act. The Secretary has renewed that declaration, most recently on October 15, 2021. Subsequently, the President declared that the COVID-19 outbreak constitutes a national emergency under the National Emergencies Act, Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 18, 2020). The national emergency declaration was contin-

ued on February 24, 2021. 86 Fed. Reg. 11,599 (Feb. 26, 2021).

On January 29, 2021, CDC issued the Mask Requirement pursuant to its regulatory authorities under the Public Service Health Act with an effective date of February 1, 2021. Mask Requirement, at 8025–26. It was published in the Federal Register on February 3, 2021.

The Mask Requirement states that masks help prevent the spread of COVID-19. Mask Requirement at 8028. The stated intent of the Mask Requirement is to preserve human life; maintain a safe and secure operating transportation system; mitigate further introduction, transmission, and spread of COVID-19 into and within the United States; and support response efforts. Id. at 8027 (statement of intent).

Under the Mask Requirement, a person must wear a mask while boarding, disembarking, and traveling on any conveyance (such as an aircraft, train, road vehicle, or vessel) into or within the United States. Id. at 8026, 8029. A person also must wear a mask while at a transportation hub (such as an airport, bus terminal, port, or subway station) that provides transportation within the United States. Id. It also requires conveyance operators to only provide service to masked passengers and to use best efforts to ensure passengers stay masked during the entire trip. Id. at 8029.

The Mask Requirement provides several exemptions based on the characteristics of a passenger or the travel scenario. Id. at 8027–28. For instance, passengers under the age of two are exempt, as is travel by private conveyance for personal, noncommercial use. Id. at 8027, 8029. Other federal agencies are required to take additional steps to enforce the Mask Requirement. Id. at 8028, 8030. The Mask Requirement will remain in effect until rescinded by CDC or the public health emergency is ended by the Secretary of HHS. Id. at 8026.

## Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires federal agencies to submit a report on each new rule to both Houses of Congress and to the Comptroller General for review before a rule can take effect. 5 U.S.C. 801 (a)(1)(A). The report must contain a copy of the rule, “a concise general statement relating to the rule,” and the rule’s proposed effective date. Id. Each House of Congress is to provide the report on the rule to the chairman and ranking member of each standing committee with jurisdiction. 5 U.S.C. 801 (a)(1)(C). The CRA allows Congress to review and disapprove rules issued by federal agencies for a period of 60 days using special procedures. 5 U.S.C. 802. If a resolution of disapproval is enacted, then the new rule has no force or effect. Id.

CRA adopts the definition of rule under the Administrative Procedure Act (APA), 5 U.S.C. § 551(4), which states that a rule is “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.” 5 U.S.C. 804(3). CRA excludes three categories of rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. Id.

CDC did not submit a CRA report to Congress or the Comptroller General on the Mask Requirement. In its response to us, CDC stated the Mask Requirement was not subject to the CRA because it was an emer-

gency action under CDC’s regulatory authorities and that any delays could result in serious harms. Response Letter, at 1.

## DISCUSSION

The issue here is whether the CDC Mask Requirement is a rule under CRA. Applying the statutory framework of CRA, we first address whether the Mask Requirement meets the definition of a rule under APA. We conclude that it does. Second, we address whether any of the CRA exceptions apply. We conclude they do not. Therefore, we conclude the Mask Requirement is a rule for purposes of CRA.

CDC considers the Mask Requirement to be an order issued under its regulatory authorities implementing the Public Health Service Act. See Response Letter, at 1–2 (“[t]he mask order is an emergency action taken under 42 C.F.R. §§ 70.2, 71.31 (b), and 71.32 (b) . . . implementing regulations of 42 U.S.C. § 264”). Although an agency’s characterization should be considered in deciding whether its action is a rule under the APA definition (and whether, for example, it is subject to notice and comment rulemaking requirements), “[an] agency’s own label . . . [is] not dispositive.” *Chamber of Commerce of the U.S. v. OSHA*, 636 F.2d 464,468 (D.C. Cir. 1980); B-329272, Oct. 19, 2017.

The APA defines a rule as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency. . . .” 5 U.S.C. § 551(4). By contrast, the APA defines an order to be “the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing.” 5 U.S.C. § 551(6). As we have noted in our prior decisions, these two definitions make rules and orders mutually exclusive categories. See B-332233, Aug. 13, 2020, at 3.

Here the Mask Requirement meets the APA definition of a rule rather than an order. Regarding the first element of a rule, the Mask Requirement is an agency statement because it is an official document published in the Federal Register by CDC. Mask Requirement at 8025–26. It is of future effect, satisfying the second element, because the order states that it remains in place until rescinded or the public health emergency is terminated. Id. at 8026. Third, it implements and prescribes law or policy as it requires all travelers to wear a mask where previously they were not required to do so. Id. at 8028–29. Thus, the Mask Requirement falls within the APA’s definition of rule.

Conversely, despite its label, the Mask Requirement is not an order for purposes of the APA because it is not the result of an adjudicatory process. See *Coalition for Common Sense in Gov’t Procurement v. Sec’y for Veterans Affairs*, 464 F.3d 1306, 1316–17 (Fed. Cir. 2006). As noted previously, an order is defined as “the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form.” 5 U.S.C. § 551(6). Thus, an order results from an adjudicatory process. See *Coalition for Common Sense in Gov’t Procurement*, 463 F.3d at 1316–17. Here, the Mask Requirement was not the result of an adjudicatory process but a prospective requirement setting process. In its response to us, CDC described its process for drafting the Mask Requirement. “[It] was drafted and cleared by the CDC program (Division of Global Migration and Quarantine), Center (National Center for Emerging and Zoonotic Infectious Diseases), and CDC’s Office of the Director before it was provided to HHS for Departmental review. Following HHS review and clearance, it was provided to OMB.” Response Letter at 2. This is a process used to draft rules, not an adjudicatory proceeding.

In support of its position that the agency action here is an order not a rule, CDC asserted that its long-standing regulations permit it to act quickly to prevent the spread of communicable diseases and any delay in issuance of the Mask Requirement "could result in serious harm." Response Letter, at 1. CDC further stated that the order was an emergency action and requiring the order to go through notice and comment before taking effect "would exacerbate the substantial harm that the order was intended to mitigate." *Id.*

While CRA does not provide an emergency exception from its procedural requirements to submit rules for congressional review, CRA and APA address an agency's need to take emergency action without delay. Agencies can waive the required delay in effective date requirement when an agency for "good cause" finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C §§553(b), 808(2). Therefore, an agency can provide for a rule to take effect immediately while still complying with the agency's statutory obligation to submit the rule to Congress for review.

Having determined the Mask Requirement meets the definition of a rule, we must determine if any of the CRA exceptions apply. We conclude they do not. First, it is not a rule of particular applicability as it applies to all travelers using public conveyances and is not limited to specific parties. Mask Requirement, at 8028-29. Second, it does not deal with agency management or personnel but with travelers and conveyance operators. *Id.* at 8026. Finally, it is not a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties as it imposes new requirements on people who are traveling to wear masks while in transit and at transportation hubs. *Id.* at 8028-29. It also requires operators to only provide service to masked passengers. *Id.* Thus, no exception applies.

#### CONCLUSION

The Mask Requirement is a rule for purposes of CRA because it meets the APA definition of a rule and no CRA exception applies. Accordingly, before it can take effect, the Mask Requirement is subject to the requirement that it be submitted to both Houses of Congress and the Comptroller General for review, which provides Congress a period of 60 days in which it may disapprove the rule using special procedures in accordance with the CRA. While CDC asserted the need to act quickly as its justification for not submitting the Mask Requirement for congressional review, there is not an emergency exception under CRA. An agency may, however, invoke the CRA's good cause exception and provide for a rule to take effect immediately while still complying with the agency's statutory obligation to submit the rule to Congress for review. With this decision, we are not taking a position on the policy of imposing a mask requirement or what steps the agency or Congress may take next; our decision only addresses CDC's compliance with CRA's procedures for congressional review.

EDDA EMMANUELLI PEREZ,  
*General Counsel.*

#### RECOGNIZING THE COAST GUARD PAY AND PERSONNEL CENTER

Mr. MARSHALL. Mr. President, I rise today to recognize the 40th anniversary of the U.S. Coast Guard Pay and Personnel Center in Topeka, KS.

The Pay and Personnel Center was first established in 1979 in the suburb area of Washington, DC. In 1982, with the help of Senator Bob Dole, the center permanently moved to the Frank Carlson Federal Building in Topeka. It is a true honor that I and my staff have the pleasure of working with this devoted lineup of leaders on a routine basis.

The Pay and Personnel Center offers a focused and essential service to more than 142,000 men and women of the U.S. Coast Guard. Their mission is to provide caring and responsive personnel and compensation services for each of their military members, retirees, annuitants, and other customers in support of the Department of Homeland Security missions. The Pay and Personnel Center has continued to operate with superb attention to detail without much attention publicly. They carry out the passionate mission of providing the compensation and services necessary to keep our Coast Guard focused, secure, and dedicated. These men and women truly go above and beyond to help our Coast Guard members.

I offer congratulations and accolades to the Pay and Personnel Center on 40 years of hard work and superior service to our men and women in the U.S. Coast Guard. The center is an illustrious example of the Coast Guard motto, *Semper Paratus, Always Ready*. I ask my colleagues to join me in recognizing this milestone.

#### RECOGNIZING THE 117TH ARW OF THE ALABAMA NATIONAL GUARD

Mr. TUBERVILLE. Mr. President, today I rise to highlight the 100th anniversary of the 117th Air Refueling Wing based in Birmingham, AL, and to honor the patriotic men and women, past and present, of this storied National Guard unit. For a century, the 117th has defended our freedoms by providing worldwide air refueling, airlift, logistics, intelligence, and medical services. It is a profound honor to represent these great Americans in their nation's capital.

The United States hosts the world's most powerful Air Force, which gives our country the ability to project strength and defend freedom around the globe. This capability is made possible by a heavy reliance on our air refueling tankers that create bridges across the sky for our fighters and bombers. Since October 1994, the 117th Air Refueling Wing has proudly and effectively performed this critical air refueling mission with the KC-135 Stratotanker, a mainstay of our tanker fleet.

The 117th Air Refueling Wing is heavily utilized and often deployed. Their reliability and dedication has led them to take part in some of the most consequential military actions of our time.

During the Kosovo conflict of 1999, the wing flew operational missions over the Balkans following its deployment of six KC-135 aircraft to Brize-

Norton Royal Air Force Base, England, in support of Operation Allied Force.

After the horrific terrorist attacks of September 11, 2001, the 117th deployed to MacDill Air Force Base, FL, as part of Operation Noble Eagle to refuel F-15 and F-16 aircraft that were flying around-the-clock protective combat air patrol missions over major cities in the United States.

The wing deployed KC-135 aircraft to Incirlik Air Base, Turkey, to fly operational missions in support of Operation Enduring Freedom and later played a key role in Operation Iraqi Freedom. Each of these deployments supported and directly contributed to the success of our air operations, keeping Americans in the air and on the ground safer while imposing our will on the enemy.

But, even decades before taking on the air refueling mission, the wing had a storied beginning and a long history of service to our country.

In 1918, Major James A. Meissner, a World War I flying ace, returned home to Birmingham to lead the formation of a flying unit based at Roberts Field. As a result of his efforts, on January 21, 1922, the U.S. Department of War identified the Birmingham Aero Club as the first Air National Guard Unit in Alabama.

The unit was originally designated as the 135th Observation Squadron, Alabama National Guard, and received Federal recognition as a Corps Aviation unit. The flying squadron was nicknamed the "Birmingham Escadrille's," and Major Meissner served as the first commander.

On January 30, 1944, the unit, by then redesignated to the 106th Reconnaissance Squadron, flew its first combat sorties in B-25 Mitchell aircraft against the Japanese from Sterling Island in the South Pacific.

In 1961, the unit was federalized in support of the Berlin Crisis. For 10 months, 20 RF-84F Thunderstreak aircraft flew missions from Dreux Air Base, France.

Also in 1961, roughly 80 members of the Alabama Air National Guard secretly took part in the operation to support the Bay of Pigs invasion of Cuba. These individuals bravely defended the U.S. and Cuban people against the communist regime and were sworn to secrecy until the declassification of the mission in 1998.

In November 1971, the unit was selected to be the first Air National Guard unit to receive the RF-4C Phantom II aircraft, redesignated as the 117th Tactical Reconnaissance Wing, and assigned to the U.S. Air Force's Tactical Air Command.

Following Saddam Hussein's August 1990 invasion of Kuwait and the subsequent U.S. military buildup in the Middle East, six Alabama National Guard RF-4C aircraft equipped with special long-range cameras deployed on August 24, 1990, to Al Dhafra Air Base, United Arab Emirates. Their mission was to obtain high-resolution images of